

# Local Premium Tax Advisory Council

January 25, 2012 ~ 2:30 pm

Department of Insurance ~ Hearing Room

## Minutes

### Members Present

Sharon Clark

Mark Treesh

Greg Kosse

Mike Lane (by phone)

JT Fulkerson

Rick Smith

### Members Absent

Shellie Hampton

JD Chaney

Stan Logan

### **Call to Order / Roll Call / Welcome ~**

Commissioner Clark called the meeting to order and the roll was called. A quorum was present.

The Commissioner welcomed JT Fulkerson, representing the City of Owensboro and provided background on the Advisory Council and HB 524.

### **Approval of Minutes ~**

The minutes for the October 12, 2011 meeting were approved as drafted.

### **New Subcommittees ~**

- a. Tax exempt policyholders / Self-funded vs reinsurance

Members: Stan Logan, Mark Treesh, JD Chaney

Mark Treesh provided an update for the committee.

They met numerous times. The committee focused the meetings on a controversy related to policies in which the insured (policyholder) is state government or local government. The issue is whether these policies are taxable and, if so, whether the tax can be passed on to the policyholder.

There was legislation in the 2011 Session to address this issue that was not enacted.

The committee posed questions to DOI. After a series of dialogues, the committee came to the following conclusions:

1. There is no statutory, case law, or constitutional basis for policies insuring local governments to be exempt from local insurance premium taxes in the absence of a local ordinance specifically providing for the exemption.
2. There is no prohibition in statute, case law, or the Kentucky constitution that prevents an insurance company from collecting the tax directly from a local government policyholder. Nor is there any legal prohibition preventing insurance companies from charging the tax as a line item included in the policy premium paid by local governments. Therefore, previous bulletins suggesting that “the license fee or tax may not be added to the policy premium” should be amended accordingly.
3. Policies insuring the state are exempt; insurers should not be required to remit premium taxes on policies insuring the state as with other exempt policies.
4. There should be some guidance available to insurers and local governments as to which agencies are considered exempt for the purposes of # 3 above.

The committee also recommended that the DOI amend its bulletin accordingly and that draft language will be circulated for review. The DOI agreed with this recommendation and, due to the timing, chose to amend the annual bulletin (issued in April) rather than issue a special bulletin.

The commissioner noted that local governments can adopt ordinances to exempt policies in which the policyholder is a local government from the tax.

A general discussion was held regarding the recommendations.

JT Fulkerson raised the issue of taxes not being applicable to policies written through self-funded plans, but applicable on policies written through insurance companies. He indicated that he has received several calls related to schools on this issue.

- b. How life insurance companies collect and pay local government premium tax  
Members: Shellie Hampton, Rick Smith, JT Fulkerson

The statute allows for differences in how the tax is applied to life insurance (on the first year premium only.) At the last meeting, Rob Hardy from Investors Heritage Life Insurance Company, provided clarification on how the taxes are applied to life insurance policies. The DOI was requested to provide the amount of tax collected on life insurance. The total for 2010 was approximately \$285,000.

It is believed that this resolves the issues to be addressed by the subcommittee. The subcommittee will be maintained in the event that additional issues are raised.

c. Consistency in local ordinances

Members: Rick Smith, JT Fulkerson, Greg Kosse

The subcommittee has not met. This issue relates to providing consistency in wording of ordinances and exemptions rather than consistency in the tax rate. As an example, we previously dealt with an ordinance that exempted a specific type of farm equipment. Unfortunately, because the amount of the premium related to that specific risk could not be segregated from the total premium, implementation of the requirements of this ordinance were extremely difficult for insurance companies. This also makes enforcement difficult for DOI.

Finally, consistency is important to ensure that local governments receive the correct amount of tax revenue.

It was also noted that a template for local ordinances would be helpful for DOI to ensure that the intent of the local government was accurately conveyed.

d. Clarify credit on quarterly statement

Members: Mike Lane, JD Chaney, Shellie Hampton

The subcommittee has not met. This issue is meant to address the situation of recoupment of tax paid on unearned premium. Currently, the statute, KRS 91A.080(9), requires the tax refund to be made through a credit taken on the next quarterly statement.

The question was asked whether cities and counties have ever discussed receiving electronic tax payments rather than paper checks. It was noted that this was an issue that should be explored. It was also noted that, in the past, there were concerns by some smaller cities of the ability to receive information electronically. It was recommended that Shellie Hampton and JD Chaney survey members about their interest in pursuing electronic tax payments. The survey should address interest in the electronic receipt of both tax payment and the required quarterly statement.

**Old Business ~**

At the previous meeting, draft change to 806 KAR 2:095 were shared with the members. That administrative regulation has been filed and will be published February 1, 2012.

**New Business ~**

KRS 91A.086 required DOI to verify electronic risk location systems. Verification is valid for three (3) years. Approximately 40 entities have been verified. To ensure that there is no disruption in service for insurance companies, vendors must renew their verification at least 6 months before it expires. The timeframe for the first renewal period is rapidly approaching. Vendors were sent a reminder about their renewal. Additionally, the DOI sent a notice to various trade associations to notify their members of this issue.

Questions were asked about the purpose of these verified systems. The local government premium tax is based upon the location of the risk being insured. These systems identify

whether a specific address is located within or outside of a city boundary. Once knowing the appropriate tax jurisdiction, the insurance company can assign the appropriate tax rate.

**Suggested Next Meeting ~**

It was suggested that the DOI suggest some dates at the end of June and avoid Wednesdays due to fiscal court meetings.

**Adjourn ~**

Commissioner Clark adjourned the meeting.

Submitted By:

/s/ DJ Wasson

6/15/12  
Date

Approved By:

/s/ Sharon P. Clark

6/28/12  
Date